



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-Z-

DATE: JULY 5, 2019

APPEAL OF THE IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor. *See* Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, that the Petitioner's investment derived from a lawful source of funds, and relatedly, that the Petitioner had invested the minimum required amount of capital.

On appeal, the Petitioner asserts that the record establishes eligibility for the benefit sought.

Upon *de novo* review, we will sustain the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE, which can be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in an NCE, or invest through a regional center.¹ Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with new commercial enterprises, which in turn are associated with a specific project, known as the job creating entity (JCE). Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

¹ A regional center is an "economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e).

The invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (definition of capital). To show the lawful source of the funds, a petitioner must submit evidence such as foreign business and tax records or documentation identifying any other source(s) of capital. 8 C.F.R. § 204.6(j)(3). Bank letters or statements confirming the deposit of funds, by themselves, are insufficient. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source. *Izummi*, 22 I&N Dec. at 195.²

II. ANALYSIS

The Petitioner bases her eligibility on an investment into [redacted] the NCE, which is affiliated with [redacted] (the Regional Center). Her investment derived from a 3,900,000 Renminbi (RMB) mortgage loan on property owned by her husband. She has corroborated that her husband owns the mortgaged property, that he acquired it with lawfully sourced funds, and established the acquisition of the loan. She further has demonstrated the transfer of these loan proceeds to her own account. The record establishes that the Petitioner then transferred 1,284,900 RMB of these funds to the accounts of four family members. It further shows that these four intermediaries used the funds to purchase a total of \$191,700 and deposited this amount to the NCE's Bank [redacted] escrow account. She has therefore shown the lawful source and full path of \$191,700 of her investment.

The Chief found that the Petitioner had not demonstrated the lawful source and full path of the remainder of the funds used in her investment. The initial record before him contained a Statement of Transferring between the Petitioner and [redacted]. In this document the Petitioner agrees to send 2,450,000 RMB of mortgage loan proceeds to [redacted] and [redacted] agrees to send \$365,400 to the NCE's escrow account with the Bank [redacted]. Bank documents in the record corroborate the Petitioner's assertion that she transferred a total of 2,450,000 RMB to [redacted]'s [redacted] Merchants Bank [redacted] account, and that [redacted] transferred a total of \$365,400 to the NCE's escrow account at the Bank [redacted].

The Chief then issued a request for evidence (RFE) establishing the lawful source of funds sent by [redacted] to the NCE's escrow account. In response, the Petitioner explained that [redacted] entered into a swap agreement with [redacted] in which [redacted] sent this 2,450,000 RMB to [redacted] in exchange for \$365,400. She provided a copy of the swap agreement and [redacted] Record Registration Form for Foreign Trade Operators. She also included printouts of [redacted]'s web site, along with copies of its sales and export transactions showing purchases in U.S. dollars.

Subsequently, the Chief issued a notice of intent to deny (NOID), finding that absent independent corroborative evidence that the swap agreement was executed, the record did not establish the full path of these funds. He further found that the Petitioner had not established the lawful source of [redacted].

² These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (U.S. district court found that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns).

currency. The Petitioner then provided an explanatory letter from [redacted] and copies of [redacted]'s bank account statements showing deposits and subsequent withdrawals totaling \$365,400. After reviewing the response to the NOID, the Chief denied the petition, finding the lack of identifying information on the statements dispositive.

On appeal, the Petitioner again explains that [redacted] a legally registered foreign trade operator, accepts U.S. dollars for payment by international buyers purchasing exported goods. She asserts that evidence already within the record establishes that [redacted] operates as a legal exporter and obtains U.S. dollars as payment. The Petitioner argues that these lawfully obtained payments were the source of the funds sent to [redacted] from [redacted]. The record contains copies of invoices, sales receipts, and customs declarations demonstrating [redacted] business activities and payments in U.S. dollars, as well as its business license and Record Registration Form for Foreign Trade Operators. These materials corroborate the Petitioner's assertions that revenue from [redacted] business operations is lawfully sourced.

The record contains statements from [redacted]'s bank account, showing the receipt of the Petitioner's 2,450,000 RMB on September 20, 2016, and its subsequent transfer on September 21, 2016. The statement does not identify the recipient of the funds [redacted] transferred out. The record also includes the bank statements for [redacted]'s account in [redacted], showing the deposit of funds there on September 28, 2016, and later transfer to the Petitioner in October 2016. The [redacted] statement for [redacted] account does not identify the source of the funds deposited into it.

Here, the Chief has not questioned the validity of the agreement with [redacted] nor identified discrepancies or irregularities in the record that raise doubts regarding the transactions. We further note that the swap agreement with [redacted] identifies [redacted] account that received the funds, and indicates that it would transfer the U.S. dollars to her within a five day period after receipt of the Chinese currency. The transactions documented in the record, accounting for the time it takes to transfer funds between countries, generally conform to that schedule. Without any identified negative considerations, we find the evidence in the record sufficient to establish, by a preponderance, that the funds transferred to [redacted] originated with [redacted]'s lawful business activity, and relatedly, that the Petitioner had invested the minimum amount of required capital.

III. CONCLUSION

The Petitioner has established the lawful source of her investment into the NCE and that she has invested the minimum amount of required capital. Accordingly she has demonstrated eligibility for the immigrant investor classification. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of A-Z*, ID# 1594569 (AAO July 5, 2019)